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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/305,457 05/06/99 ABDULLOVSKI

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IM62/0810

EXAMINER

WEINSTEIN, S

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

08/10/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/308457

Applicant(s)

ABDULLOVSKI

Examiner

S. WEINSTEIN

Group Art Unit

1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 5/15/00
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 5, 6 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 5, 6 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reference V in view of Reference U, further in view of Reference W, X and N, further in view of applicant's admission of the prior art essentially for the reasons given in the last Office Action mailed 2/9/00, paper no.2.

Thus, Reference V discloses a combination package for snack chips and condiments for the chip products, said package comprising a package (the bag) containing a plurality of chips and a smaller package (the packet) that is smaller than the bag and containing a condiment product that is complimentary to the chip product. The condiment package is obviously smaller than the chip package since it is inside the chip package. Claim 5 differs from Reference V in the particular snack chips packaged. Once it is known to package a snack food and a condiment, the particular conventional snack food selected is seen to have been an obvious matter of choice. Note that Reference U can be relied on to teach that applicant was not the first to package both tortilla chips and a condiment: the single package contains a .3oz container of cheddar and jalapeno dip and 1.5oz of tortilla chips. Reference W is relied on as further evidence of packaging

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a condiment in a separate package along with packaged taco chips whereas Reference X and N disclose packaged snack chips accompanied with a separate package of condiment. Claim 5 further differs from Reference V in the recitation of the structure of the smaller package. Claim 5 reciting that the package is a cup shaped member with an opening and a removable overlay that is in air tight connection with the cup to close the opening (and wherein the cup shaped member has a flat rim). As evidenced by applicants admission of the prior art, applicant is not the inventor of the smaller package. On page 1, of the specification, applicant states that one of two industry-wide type of condiment containers can be used and the cup shaped container is termed the souffle' type. Applicants admission of the prior art no doubt has in mind the cup shaped small package with overlying removable cover film that is sealed to the flat rim of the cup that is notoriously conventional and has been used for years in the restaurant business to package small servings of jelly, butter, honey, cream, etc. To modify the combination and substitute one conventional package structure for another conventional package structure for its art recognized and applicant's intended function is seen to have been obvious.

All of applicants remarks filed 5/15/2000, paper no. 3, have been fully and carefully considered but are not found to be convincing. Applicant's urgings are directed to limitations not found in the claims. It is urged that none of the prior art teach or suggest a rigid outer container. Note, however, that the claims are silent as to the nature of the outer container (the claims are even silent as to the smaller package being contained in the larger package). In fact, Figure 1

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appears to have the appearance of a typical flexible box with seals at the top and bottom represented by the hatched lines rather than a rigid outer container. Thus, applicant is not disclosing or claiming two rigid containers. Note, too, any advantage derived from using a conventional cup shaped container would be expected. As noted previously and above, applicant is not the inventor of these conventional cup shaped packages. McDonalds has used these packages for years for both dispensing and dipping (such is their line of sauces for their Chicken McNuggets). A major delivery pizza franchise has used these conventional cup shaped packages for several years for dipping pizza and bread sticks. There simply is no unexpected result in their use relative to the so-called squeeze bag. It is also urged that the cup shaped package allows for easy reseal. However, since applicant is not the inventor of the package, since the claims are article claims, and since this would be an expected result achievable through the conventional structure, the urging is not convincing. It is also not clear that all of the art that associate a snack chip package and an accompanying condiment/dip employ squeeze tubes. Reference U, e.g. discloses a dip receptacle for tortilla chips that is deferred to as a container rather than a packet, sachet, pouch or bag. The examiner will attempt to obtain more information on this product. The inventor is invited to seek further information as well.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Mr. Weinstein at telephone number (703) 308-0650.

Weinstein/amc

7-28-00/8-3-00

  
STEVEN WEINSTEIN  
PRIMARY EXAMINER  
ART UNIT 132 1761  
8/9/00